



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
CALIFORNIA DISPATCH LINE }

Appearances:

For Appellant: V. C. Sheehan, its President

For Respondent: Frank M. Keesling, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the California Dispatch Line, a corporation, to his proposed assessment of an additional tax in the amount of \$589.03 for the year ended December 31, 1935, based upon the income of the corporation for the year ended December 31, 1934.

The Appellant was engaged during the year 1934 primarily in the business of leasing tank cars, the business also including, however, some sales of cars. The cars were located and operated in California and other states, the Appellant's business being managed and directed, however, entirely from its office in this State. With the exception of an office at Baton Rouge, Louisiana, which was maintained merely to comply with the laws of that state and which was not actually employed in the conduct of its business, it had no offices or places of business outside California and no employees located in other states.

During the year the Appellant derived certain income from the sale of tank cars, some of the cars apparently being located within and others outside the state at the time of sale. The Commissioner objected to the allocation by Appellant of a portion of the net income from the sale of the cars to business done outside the state, assigning that entire net income to business done within the state and levying his proposed assessment accordingly. The validity of this action of the Commission is the sole question presented by this appeal.

Under Section 10 of the Bank and Corporation Franchise Tax Act, the tax is to be measured by the Appellant's entire net income if its entire business is done within this State and, if it is to prevail the Appellant must therefore, establish that its entire business was not done within the state. Upon the basis of the evidence before us it cannot, however, be concluded that the Appellant did business outside the state. The mere ownership by Appellant of cars located outside the

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state and from which income is derived in the form of rentals, the operation of the cars being directed by the lessees does not constitute doing business by Appellant outside the state (State v. American Refrigerator Transit Co., 151 Ark. 521, 237 S.W. 78; Union Tank Line Co. v. Day, 143 La. 771, 79 So. 334; Commonwealth v. American Bell Telephone Co., 129 Pa. 217, 18 Atl. 122) and the sale in the manner described herein of a few cars which at the time of sale are located in other states does not; in our opinion, constitute doing business outside this State, the Appellant having no offices or employees located outside the state and the sales being made through its offices in this State. (Rashford Lumber Co. v. Dolan, 122 Ore. 572, 260 Pac. 224; W. H. Lutes v. Wysong, 100 Minn. 112, 110 N.W. 367). We believe, accordingly, that the action of the Commissioner should be sustained,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of the California Disptach Line, a corporation, to a proposed assessment of an additional tax in the amount of \$589.03 for the year ended December 31, 1935, based upon the income of said corporation for the year ended December 31, 1934, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of March, 1938, by the State Board of Equalization.

R. E. Collins, Chairman
Jno. C. Corbett, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary